

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION	)	
FOR BENEFICIAL WATER USE PERMIT	)	FINAL ORDER
NO. 39786-g76H BY WESTERN WATER	)	
COMPANY.	)	

\* \* \* \* \*

Exception has been entered to the Proposal for Decision on behalf of Western Water Company.

The thrust of the argument is that the Proposal was "wrong" in finding an adverse affect from the Applicant's proposed pumping on the prior rights of the Objectors. Such a broad assertion is not useful and is virtually meaningless. The burden of persuasion is on the Applicant, MCA 85-2-311, and the Applicant has failed to discharge the same.

The Applicant proffers a "condition" that it be protected in its use of 132 acre feet under "Notice No. 22285-676H." No other claim or permit is involved in this proceeding. Any use of water other than that claimed herein is sanctioned only under a rule of priority. MCA 85-2-401. We cannot, even if we were of a mind to, sanction any other water use that infringes on prior rights.

Finally, we note that the Proposal inaccurately states that "official notice" was taken of statements of claim. It is not necessary to do so. The domestic groundwater use of the Dickersons, the Schindlers, and M. Lamoreaux in this confined basin are not subject to adjudication process. MCA 85-2-222,

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MCA 85-2-102(8). We need only recognize any individual domestic use to sustain our decision herein, and that recognition need not include a "statement of claim."


WHEREFORE, Application for Beneficial Water Use Permit No. 39786-g76H by Western Water Company is denied and dismissed in its entirety.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within thirty (30) days after service of the Final Order.

DONE this 24<sup>th</sup> day of March, 1983.

  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural  
Resources and Conservation  
32 South Ewing  
Helena, Montana 59620  
(406) 449-2872

  
\_\_\_\_\_  
Matthew W. Williams,  
Hearing Examiner  
Department of Natural Resources  
and Conservation  
32 South Ewing  
Helena, Montana 59620  
(406) 449-3712

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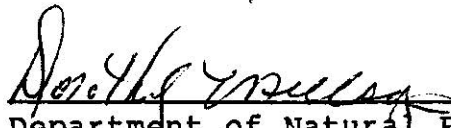
AFFIDAVIT OF SERVICE

STATE OF MONTANA )  
 ) ss.  
County of Lewis and Clark )

Dorothy Millsop, Legal Secretary of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That pursuant to the requirements of Section 85-2-309, MCA on March ~~31~~<sup>12</sup>, 1983, she deposited in the United States mail, "first class mail", a FINAL ORDER by the Department on the application by Western Water Company, Application No. 39786-G76H, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

1. John D. & Kathleen F. Schindler, 5816 Deborah Court, Missoula, Montana 59803
2. Clarence E. & Mary F. Dickerman, 3120 El Dora Lane, Missoula, Montana 59803
3. Western Water Company, P.O. Box 5147, Missoula, Montana 59806
4. Larry & Suzanne Fox, 3408 El Dora Lane, Missoula, Montana 59803
5. Jacqueline Kindred, 5816 Jay Lane, Missoula, Montana 59803
6. Donald Ebbutt, 5820 Jay Lane, Missoula, Montana 59803
7. Mark Moser, 3217 Helena, Drive, Missoula, Montana 59803
8. Donald Louis Herman, 3332 El Dora Lane, Missoula, Montana 59803
9. Dave Pengelly, Area Office Supervisor, Missoula Field Office, Missoula, Montana 59801
10. Paul LeMire, Department of Natural Resources, 32 South Ewing, Helena, Montana 59620
11. M. M. Lamoreaux, 3144 Lower Miller Cr. Road, Missoula, Montana 59803
12. William Evan Jones, Garlington, Lohn & Robinson, 199 West Pine, Missoula, Montana 59802
13. Frank Crowley, Dept. of Health and Environmental Sciences, Legal Division, Cogswell Building, Helena, Montana 59620

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\_\_\_\_\_  
Department of Natural Resources  
-3-

STATE OF MONTANA )  
 ) ss.  
County of Lewis and Clark )

On this 31 st day of March, 1983, before me, a Notary Public in and for said State, personally appeared Dorothy Millsop, known to me to be the Legal Secretary of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Donald D McIntyre  
Notary Public  
Residing at Helena, Montana  
My Commission expires 12/15/84

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**RECEIVED**

MAR 18 1983

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

MONT. DEPT. OF NATURAL  
RESOURCES & CONSERVATION

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT )  
NO. 39786-g76H BY WESTERN WATER )  
COMPANY. )

EXCEPTIONS AND OBJECTIONS  
TO PROPOSAL FOR DECISION

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedures Act, the applicant, Western Water Company, hereby files the following exceptions and objections and further revises its plans and develops the following conditions to protect the instant objectors in their historic uses.

I.

The applicant excepts and objects to any and all findings of fact and conclusions of law that the proposed taking by the applicant will create an adverse effect upon the instant objectors.

II.

The applicant stipulates that should the Department of Natural Resources and Conservation in fact find that water taken pursuant to this application in fact creates an adverse effect upon the instant objectors and thus constitutes a mining of the aquifer, then and in that event the applicant will take only that annual withdrawal rate of 132 acre-feet appropriated June 7, 1979 under notice no. 22285-676H.

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RESPECTFULLY SUBMITTED this 17 day of March, 1983.

GARLINGTON, LOHN & ROBINSON

By 

Wm. Evan Jones  
199 W. Pine, P. O. Box 7909  
Missoula, MT 59807

Attorneys for Western Water  
Company

CERTIFICATE OF MAILING

I, Wm. Evan Jones, one of the Attorneys for Western Water Company herein, hereby certify that on this 17 day of March, 1983, I mailed a copy of the foregoing EXCEPTIONS AND OBJECTIONS TO PROPOSAL FOR DECISION, postage prepaid, to the following:

Dorothy Millsop  
Legal Secretary  
Montana Department of Natural Resources  
and Conservation  
State Capitol Building  
Helena, MT 59620

Frank Crowley  
Department of Health and Environmental  
Sciences  
Legal Division  
Cogswell Building  
Helena, MT 59620



CASE # 39786

BEFORE THE DEPARTMENT  
OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT ) PROPOSAL FOR DECISION  
NO. 39786-g76H BY WESTERN WATER )  
COMPANY. )

\* \* \* \* \*

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedures Act, a hearing in the above-entitled matter was held in Missoula, Montana.

STATEMENT OF THE CASE

The present application seeks 150 gallons a minute up to 90 acre-feet per year for domestic use continually throughout the year. The source of supply is implicitly claimed to be ground water, to be diverted at a point to the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, Township 12 North, Range 20 West, in Missoula County. The pertinent portions of this application were duly published for three successive weeks in the Missoulian, a newspaper of general circulation printed and published in Missoula, Montana. The applicant appeared at this hearing through Leon Spitz, and through counsel William Jones.

An objection to the granting of this application was filed with the Department of Natural Resources and Conservation by John and Kathleen Schindler. These objectors allege and complain generally that there is not sufficient unappropriated

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water available for the applicant's proposed use, and that diversions pursuant to its claimed rights would work injury to their existing water rights. These objectors appeared at the hearing in this matter.

Objection to the granting of this application was also filed by Clarence E. and Mary F. Dickerman. This objection complains implicitly that there is no unappropriated water available for the applicant's proposed use, and that diversions pursuant thereto would work injury to their existing rights. These persons did not appear at the hearing in this matter.

An objection was also filed with the Department of Natural Resources and Conservation by Larry E. and Susanne Fox. Again, the objection complains generally there is not sufficient unappropriated water available for the applicant's proposed use without working injury to existing water rights. These people did not appear, either personally or by representative, at the hearing in this matter.

An objection was also filed to the instant application by Jacqueline J. Kindred. This objection implicitly claims that diversions pursuant to applicant's claimed use would work injury to her existing water right. This person did not appear either personally or by representative at the hearing in this matter.

Objection was also filed by Donald L. Ebbutt to the granting of the instant application. Mr. Ebbutt complains generally that there is insufficient unappropriated water available for applicant's proposed use without working injury to existing



water rights. Mr. Ebbutt appeared at the hearing in this matter.

An objection was also filed to the instant application by Mark Moser. Implicitly, Mr. Moser claims that the applicant's proposed use would work injury to existing rights. Mr. Moser appeared at the hearing in this matter.

Lastly, an objection to the instant application was also filed with the Department of Natural Resources and Conservation by Donald Herman. Mr. Herman alleges generally that there is insufficient unappropriated water available in the proposed area to provide for applicant's proposed use.

Mr. M.M. Lamoreaux having no actual notice of the pendency of this proceeding moved to intervene as an objector based on a claim of adverse affect to his existing ~~w~~ater rights. Such intervention was allowed without objection.

David Pengelly, Area Office Field Supervisor for the Department's Missoula field office, appeared and represented the Department of Natural Resources and Conservation in this hearing.

#### EXHIBITS

The Department of Natural Resources and Conservation offered the following exhibit into evidence, to-wit:

D-1: A geological report pertaining to the amount of water available for the Applicant's proposed use.

D-2: A collection of well logs from wells in the vicinity of the Applicant's proposed well with an attached map showing the location of these wells.

D-3: A memorandum prepared by David Pengelly depicting the locations and static water levels of several wells in the vicinity of the Applicant's proposed well.

D-4: A map showing the location of the Applicant's proposed and existing well and the location of the three wells used as observation wells during the test conducted on June 21, 1982. Included within this exhibit are well logs of the three observation wells.

The Department's exhibits were received into evidence without objection.

#### FINDINGS OF FACT

1. The Department of Natural Resources and Conservation has jurisdiction over the subject matter herein and over the parties hereto, whether they have appeared or not.

2. The Applicant has a bona fide intent to appropriate water pursuant to a fixed and definite plan, and it is not attempting to speculate in the water resource.

3. The Applicant is a personal entity entitled to appropriate water.

4. The Applicant's intended use of water for domestic purposes is a beneficial one.

5. The Applicant intends to use the water for domestic purposes, which includes in-house use and lawn and garden watering.

6. The Applicant intends to divert up to 150 gallons a minute and up to 90 acre feet per year for the described purposes continuously as needed throughout the year.

7. The Applicant has need and can use 150 gallons a minute up to 90 acre feet per year for domestic purposes.

8. The Applicant would use the water in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, Township 12 North, Range 20 West, in Missoula County.

9. The Applicant intends to divert the waters claimed herein by means of a well, the depth of which is 242 feet.

10. The Applicant has an additional well located some 200 feet away from the well involved herein.

11. Both of the Applicant's wells are finished into a tertiary aquifer. The Objector's Schindler, Dickerman and Lamoreaux also have wells and divert water for beneficial purposes from this same tertiary aquifer.

12. This tertiary aquifer is heterogeneous and discontinuous, meaning that is comprised of various segments of gravels, sands, and clays which exhibit different capacities to transmit water. All the waters in the tertiary aquifer involved herein, however, are interconnected, such that waters diverted from one point in the aquifer will affect a water supply at any other point in the aquifer over time.

13. The tertiary aquifer is recharged solely by rainfall and snow-melt. The fine-grain sands and clays that are found in the geologic material of the aquifer have low transmissivity capacities and therefore restrict recharge from downward percolation of water.

14. The Applicant's pumping will create a cone of depression, or a dewatered area in the shape of a cone with the apex at the pump.

15. The cone of depression created by the pumping of the Applicant's well involved herein will fluctuate according to the amount of recharge available to the aquifer. In those portions of the year in which little recharge is available, the Applicant's cone of depression will spread further and the hydraulic gradient to the pump will be less. At all times of the year, the Applicant's cone of depression will intercept and overlap with the cone of depression created by the pumping of the Objectors Schindler, Lamoreaux, and Dickerman. The extent of the overlap will depend on the amount of recharge available to the aquifer and the Applicant's wells at any given time of the year.

16. A characteristic transmissivity value for the tertiary aquifer is 7,145 gallons per day per foot. The transmissivity of the aquifer at a given point will depend on the composition of gravel, sand, or clay characteristic at that point.

17. The tertiary aquifer is a confined aquifer, meaning that it has relatively impermeable boundaries.

18. Only the wells of the Schindler, the Dickermans, and Mr. Lamoreaux will be affected by the Applicant's proposed water use.

19. If the Applicant pumps 150 gallons per minute continuously to withdraw 90 acre feet from the aquifer and there is no recharge during the period of withdrawal, the drawdown at the Schindler well will be approximately 15 feet, and the draw down at the Dickerman well will be approximately 12 1/2 feet, assuming that neither of the Objectors are also pumping. Drawdown at the mentioned wells will be significantly greater at times when these Objectors are pumping to provide water for their own uses.

20. Recharge to this tertiary aquifer will come primarily in the spring at the snow-melt time.

21. The Schindlers deepened an existing well from approximately 140 feet to 230 feet in 1978. The need for a deeper well was precipitated by a lack of water in 1977. Since the deepening of the well, the Schindlers have not experienced problems with water availability.

22. The Objector Lamoreaux has four wells ranging in depth from 161 feet to 231 feet, and said Objector has had trouble with water availability in several of the wells since 1977.

23. The applicant completed its initial well and began pumping in 1977.

24. The year 1977 was a dry year.

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25. The tertiary aquifer is substantially deeper than any of the parties well depths.

26. The Objectors Lamoreaux, Dickerman and Schindler have reasonable means of diversion for their uses.

27. The Objectors Schindler, Dickerman and Lamoreaux have water rights senior to those of the Applicant.

28. The Applicant's means of diverting water for its intended purposes are reasonable and customary, and said means will not result in the waste of the water resource.

29. The Applicant's use would in no event result in the waste of the water resource.

30. There are unappropriated waters available for the Applicant's proposed use in the amounts that it seeks, during the time it seeks the use of the water.

31. Diversions pursuant to Applicant's proposed use would work injury to Objectors Schindler's, Dickerman's and Lamoreaux's water rights.

32. The results of the pumping test conducted by the Applicant do not provide accurate or reliable means of determining adverse affect to other water users. The Applicant conducted the test at a time when the observation well was also pumping, and ran the test for an inadequate period of time.

33. The Applicant's wells are significantly higher topographically than any of the Objector's wells.

34. The present application was regularly filed with the Department of Natural Resources and Conservation on October 19, 1981, at 1:00 p.m.

## CONCLUSIONS OF LAW

1. The Department of Natural Resources and Conservation has jurisdiction over the subject matter herein, and over the parties hereto, whether they have appeared or not. MCA 85-2-301 et. seq.

2. MCA 85-2-311 sets forth the exclusive criteria by which the present application for permit must be tested.

3. The use of water claimed herein would benefit the applicant, and such a use of water belongs to the type of uses that are beneficial. See MCA 85-2-102(2).

4. The diversion of 90 gallons a minute up to 150 acre feet per year will not result in the waste of the water resource and said amounts can be used beneficially. See generally, Allen v. Petrik, 69 Mont. 373, 222 P. 451 (1924), Worden v. Alexander, 108 Mont. 208, 90 P.2d 160 (1939).

The concerns gleaned from the Objectors herein as to whether or not the present quantity of water plus the quantity of water available from Applicant's existing well will be adequate for the Applicant's entire project are immaterial to this proceeding. It is enough to say that all of the water sought by the Applicant herein can be put to beneficial use and will be required if its plans are culminated.

5. The Applicant's proposed means of diversion, construction and operation of its appropriation works are adequate for its intended purposes. Said means will not result

in the waste of the water resource. See generally State ex rel. Crowley v. District Court of Sixth Judicial District, 108 Mont. 89, 88 P.2d 23 (1939).

6. The Objector Lamoreaux has a prior right to the water resource as he has diverted and applied water to beneficial use. See MCA 85-2-102(7). The Objectors Schindlers have a prior right in that they have diverted and applied waters to beneficial use by way of permits from the Department of Natural Resources and Conservation.

No detailed findings or conclusions need be made herein regarding the precise scope and character of the water rights held by the Objectors. It is clear to the Hearings Examiner by testimony of the Schindlers and Mr. Lamoreaux that they each enjoy a water right to some degree and character. While the Dickermans did not appear at the hearing in this matter, it does not appear thereby that they have "waived" their objection to this permit. The testimony of the Department is enough to substantiate some water right on their behalf.

It is true that the record reveals no statements of claim or evidence thereof for the Dickermans or Lamoreaux. See MCA 85-2-221. The burden of production of an existing right is on the complaining objector. The hearings examiner has officially noted claims attendant to their asserted rights for the sole purpose of determining whether such rights have been abandoned as a matter of law. See MCA 85-2-226. Any claims of prejudice

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by the Applicant in this regard should be specifically detailed in its objections to the instant Proposal.

7. There is unappropriated or surplus water available to the applicant in the amount it seeks and throughout the period during which it seeks the use of the water. See generally, Custer v. Missoula Public Service Co., 91 Mont. 136, P.2d 131 (1931). It is clear that the "tertiary" aquifer involved herein is penetrated by the parties' wells only to a small degree, and that such aquifer contains additional waters not required for the actual uses of any of the Objectors.

8. Any diversions by the Applicant pursuant to the claims made herein will result in adverse effect to the prior appropriative rights of the Schlinders, the Dickermans and M. M. Lamoreaux. (While it is true that water is available to the Applicant above and beyond the actual "duty of water" required by the Objectors, see generally, Worden v. Alexander, supra., it is also clear on this record that extracting this water would frustrate the Objector's ability to withdraw that quantity of water required for their respective uses. An appropriator's rights extend to protection of a "reasonable means of diversion," and, on this record, the Objectors hereto could not reasonably exercise their rights under the changed conditions prompted by the Applicant's proposed pumping See, State ex rel. Crowley v. District Court, supra., MCA 85-2-401)

The testimony of the Department indicates the probable drawdowns at Objectors' Schindler and Dickerman wells. This

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analysis assumed a continuous pumping by the Applicant at the maximum rate of 150 gallons per minute. This, of course, is an improbable state of affairs. The Applicant would logically pump at this rate only at times of simultaneous demand at the various households.

This observation does not militate against the force of the Department's testimony, however. The critical feature of the present matter is the lack of substantial recharge to this confined tertiary aquifer. While the Department assumed no recharge for purposes of its analysis, the recharge that does exist is not significant enough to materially change the analysis.

To maintain existing water levels, this aquifer is currently dependent on the character and amount of precipitation and associated run-off. The problem is thus not one of well-spacing per se, but rather one of maintaining reasonable pumping levels in the face of the inevitable uncertainties of recharge. The cone of depression created by the Applicant's pumping will inevitably extend substantial distances as recharge accumulated in spring and early summer is withdrawn. Pumping at irregular times and rates will not significantly decrease this effect, since little recharge will be available to refill the existing cone, and since the overall continuing demand characteristic of domestic uses will not provide sufficient time for this aquifer to recover.

One must also add to the Department's projected <sup>a</sup>drawdowns that measure of drawdown necessarily associated with the Objectors' own pumping. The combined effect is more severe than that drawdown of any individual well pumping alone, since the overlapping cones of depression associated with all wells pumping will result in competition for saturated portions of the aquifer, resulting in further drawdown at each individual well. \*

The foregoing is not meant to declare the Hearings Examiner's unequivocal belief that pumping of Applicant's well will inevitably draw the water table below the depths of the Objectors' wells. It need not result in substantial adverse affect to the Objectors. As the cones of the respective wells widen, the hydraulic gradient along such cones will be reduced, thereby limiting the available recharge to each individual pump. The result will be frustration to the Objectors in withdrawing any appreciable quantity of water on a regular basis, even for strictly in-house domestic use. Recharge to the aquifer via return flow from Applicant's use will not obviate this result, if indeed the return flow will be directed to this aquifer. This is so because of the time involved in these waters percolating down to the Objectors' pumps.

The above circumstances could lead to Applicant's well being self-policing. That is, the <sup>m</sup>combined effect of Applicant's two wells, together with their higher topographic levels, may lead to relatively complete curtailment of the existing wells before any dramatic consequence ensues to Objectors. However, the \*

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Hearings Examiner is not convinced of this result, and at any rate, such a situation would indicate a lack of available water for the Applicant's proposed use.

The experience of the Objectors Schindler and Lamoreaux are instructive as to the actual effects posed by the instant claim. On or about the time of the initiation of pumping of Applicant's first well, both of these Objectors experienced difficulties in securing water. Mr. Lamoreaux's problems have been continuing; the Schindlers have dug a deeper well.

The Examiner is aware that 1977, the same year as the initiation of such pumping, was a dry year, and that this drought can explain the difficulties in water supply in that year. However, this merely highlights the critical nature of the water supply. The testimony of the Department, substantiated through the evidence of the limited recharge available to the aquifer, is that this source of supply is close to at its "safe yield." That is, additional consumption may result in mining the aquifer, or withdrawing more water than is replaced in the aquifer on a long-term basis.

Of course, mining water is not inevitably a practice to be condemned where the amounts of water "tied up" by relatively shallow wells is great and the need for water on the overlying basin is critical to its development. See generally, Mathers v. Texaco, 77 N.M. 239, 421 P.2d 771 (1966). The Applicant has failed, however, to demonstrate such a situation in this record.

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The Objectors have wells of a considerable depth for domestic purposes. They are located at or close to the "safe yield" of the aquifer. These means of diversion are reasonable as against the Applicant. Deeper wells and increased pumping costs that may alleviate the present conflict must come at the expense of the Applicant. State ex rel. Crowley, supra., Colorado Springs v. Bender, 148 Colo. 458, 366 P.2d 552 (1968); In Re East Bench Grain & Machine, Dept. Order 3/82.

In accord with MCA 85-2-102(3), it is reasonable to accord the Applicant further time to devise conditions and restrictions whereby the pumping levels of the Objectors hereto may be maintained, or water otherwise be provided to them in accordance with their historic uses. See MCA 85-2-312(1), East Bench, supra. Further study and modification of the intent revealed herein may reveal that some water is available to the Applicant without adverse affect to the instant Objectors. For example, several deeper wells could be installed for the Applicant's plans, with water delivered also to the Objectors. The Applicant may also consider the use of a recharge basin or injection scheme. These are matters for further study by the Applicant.

It is recognized that deciphering the movement and extent of groundwater is often a difficult and expensive task. The burden of proof is on the Applicant, however. The attenuated connection between diversion by a groundwater appropriator and the effects thereof must be accounted for. Inattention to this issue threatens long-term deprivation to the senior

appropriator, and possible irreparable harm to the aquifer. See generally, East Bench, supra, Kuiper v. Well Owners Conservation Ass'n, 179 Colo. 119, 490 P.2d 268 (1971), Fundingsland v. Colorado Ground Water Commission, 171 Colo. 487, 468 P.2d 835 (1970), Templeton v. Pecos Valley Artesian Conservacny Dist., 65 P.M. 59, 332 P.2d 465 (1968).

Finally, the Hearings Examiner has noted the testimony of the Applicant to the effect that the Department of Health and Environmental Sciences has approved certain plans in relation to this well. I assume that this is in relation to MCA 76-4-101, et. seq., see MCA 76-4-104(b). Even if any certification pursuant to this statutory scheme could be officially voted at this juncture, and even if such certification was then endowed with the presumption of regularity attendant to official acts, I would nonetheless conclude that the evidence herein points only to conclusion of adverse affect. The testimony and documentary evidence of adverse affect herein simply outweigh any inferences available from any act of certification from the Department of Health. Compare, in re Proposed Order, 3/82.

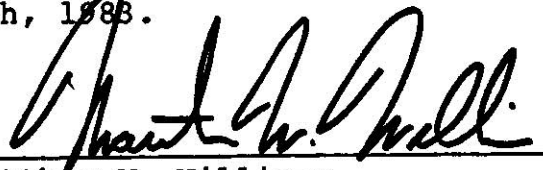
WHEREFORE, based on these findings of fact and conclusions of law, it is recommended to the Department that the instant application be denied and dismissed in its entirety, unless the Applicant elects within the time provided for herein for objections to revise its plans and develop conditions that will protect the instant objectors in their historic uses.

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NOTICE

Exceptions and objections to this Proposal for Decision must be received by and filed with the Department on March 21, 1983.

DONE this 8<sup>th</sup> day of March, 1983.



Matthew W. Williams  
Department of Natural Resources  
and Conservation  
32 South Ewing  
Helena, Montana 59620  
(406) 449-3712

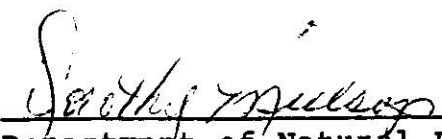
CASE # 39786

AFFIDAVIT OF SERVICE

STATE OF MONTANA )  
 ) ss.  
County of Lewis and Clark )

Dorothy Millsop, Legal Secretary of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says: That pursuant to the requirements of Section 85-2-309, MCA on March 9, 1983, she deposited in the United States mail, "first class mail", a PROPOSAL FOR DECISION by the Department on the application by Western Water Company, Application No. 39786-G76H, for a Permit to Appropriate Water, addressed to each of the following persons or agencies:

1. John D. & Kathleen F. Schindler, 5816 Deborah Court, Missoula, Montana 59803
2. Clarence E. & Mary F. Dickerman, 3120 El Dora Lane, Missoula, Montana 59803
3. Western Water Company, P.O. Box 5147, Missoula, Montana 59806
4. Larry & Suzanne Fox, 3408 El Dora Lane, Missoula, Montana 59803
5. Jacqueline Kindred, 5816 Jay Lane, Missoula, Montana 59803
6. Donald Ebbutt, 5820 Jay Lane, Missoula, Montana 59803
7. Mark Moser, 3217 Helena, Drive, Missoula, Montana 59803
8. Donald Louis Herman, 3332 El Dora Lane, Missoula, Montana 59803
9. Dave Pengelly, Area Office Supervisor, Missoula Field Office, Missoula, Montana 59801
10. Paul LeMire, Department of Natural Resources, 32 South Ewing, Helena, Montana 59620
11. M. M. Lamoreaux, 3144 Lower Miller Cr. Road, Missoula, Montana 59803
12. William Evan Jones, Garlington, Lohn & Robinson, 199 West Pine, Missoula, Montana 59802
13. Frank Crowley, Dept. of Health and Environmental Sciences, Legal Division, Cogswell Building, Helena, Montana 59620

  
\_\_\_\_\_  
Department of Natural Resources

CASE # 39786



STATE OF MONTANA

)

) ss.

County of Lewis and Clark )

On this 9th day of March, 1983, before me, a Notary Public in and for said State, personally appeared Dorothy Millsop, known to me to be the Legal Secretary of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Donald D MacIntyre

Notary Public

Residing at Helena, Montana

My Commission expires 12/15/84

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